

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE M.H.S.ANSARI,

THE HON'BLE SRI JUSTICE D.S.R.VARMA,

AND

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 15904 of 1994

Between:

M/s. S.L.V. Wines rep. by Proprietor S. Venkataiah, S/o Venkatanna
R/o Mydukur Town, Cuddapah Dist.

..... PETITIONER

AND

- 1 The State of A.P. rep. by Prl. Secretary, Excise (Revenue)
Secretariat Buildings, Hyderabad
- 2 The Commissioner of Excise Govt. of A.P.
Hyderabad
- 3 The Excise Superintendent Shankarapuram, Cudapah Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, writ or direction in the nature of Writ of Certiorari and to quash the impugned order of the Excise Commissioner passed in CR No.21341/94/Ex/G.3 dt: 20-8-1994 as illegal and arbitrary and issue a consequential direction, directing the 2nd respondent to allow remission of licence fee to the petitioner for 48 days from 21-11-1993 to 7-1-1994 as the petitioner shop was illegally closed

Counsel for the Petitioner: MR.A.V.SIVAIAH

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court made the following :

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ORDER: (Per TCSR,J)

The petitioner seeks a writ of certiorari to quash the order of the Excise Commissioner passed in CR.No.21341/94/Ex/G.3 dated 20.08.1994 as illegal and arbitrary and for a consequential direction to the second respondent to allow remission of licence fee for 48 days during which period the petitioner's shop was illegally closed.

When the writ petition came up for consideration before the Hon'ble Chief Justice, noticing the conflict between the Judgment of this Court in THE ASSISTANT COMMISSIONER OF PROHIBITION AND EXCISE v. K.KRISHNA REDDY (Writ Appeal No.529 of 2003 dated 26.06.2003) and the decision reported in TODDY TAPPERS CO-OPERATIVE SOCIETY, PULEKONA GROUP, PULEKONA, HDYERABAD DISTRICT v. STATE OF ANDHRA PRADESH AND OTHERS, the learned Chief Justice felt that the controversy be set at rest by a Full Bench. That is how the matter has come up before us.

The case of the petitioner in brief is thus: The writ petitioner has been running a retail liquor shop, F.L.24 under the name and style of M/s.S.L.V.Wines at Mydukur Town in Cuddapah District. On a complaint said to have been given by one Chinna Veeraiah, the third respondent/Excise Superintendent sealed the shop of the petitioner on 21.11.1993 and eventually the licence too was suspended by an order in Crime No.B3/3663/93 dated 25.11.1993 which was served on the petitioner on 26.11.1993, followed up by a show cause notice dated 08.12.1993 which was served on 28.12.1993 at 06.00 P.M. The petitioner submitted his explanation pursuant thereto on 04.01.1994. It was explained *inter alia* that by mistake a complaint was lodged against the petitioner. Basing on the explanation given by the petitioner, the Excise Inspector was directed to submit a report. After perusing the report submitted by the Excise Inspector and the explanation submitted by the petitioner the third respondent under his proceedings in Rc.No.B3/3663/93 dated 07.01.1994 revoked the suspension and the stocks seized were directed to be released to the petitioner.

The petitioner originally paid licence fee of Rs.45,000/- and thereafter an amount of Rs.17,500/- by way of challan on 11.01.1994 besides furnishing a bank guarantee for Rs.62,500/-. The annual licence fee of Rs.1,25,000/- was thus paid by him. However, on account of the wrongful closure of his shop from 21.11.1993 to 07.01.1994, he sustained heavy loss. The licence fee for the said period comes to Rs.16,656/-. However, the second respondent demanded the petitioner to pay the final instalment of the licence fee to the extent of Rs.31,250/- on or before 20.06.1994. The petitioner submitted a representation to the Commissioner of Excise on 16.03.1994 requesting him to order for remission. When, the third respondent threatened to cancel the licence the petitioner filed a writ petition in W.P.No.10695/1994. That writ petition was disposed of at the admission stage on 17.06.1994 directing the Excise Commissioner to dispose of the representation of the petitioner within two weeks therefrom. In the meanwhile, the petitioner remitted a sum of Rs.16,600/- under a challan into Sub-Treasury, Proddatur, towards balance of final instalment after deducting the licence fee for 48 days during which period his shop was wrongfully closed. The Commissioner of Excise eventually rejected the representation of the petitioner.

Traversing the averments made in the affidavit filed in support of the writ petition, the respondents in the counter affidavit stated *inter alia* that as per the statement of the

complainant-Chinna Veeraiah, he became sick only after consumption of the liquor purchased from the shop of the petitioner; and that basing upon the said statement, a show cause notice was issued to the petitioner; and that it was only as per the interim directions given on 04.01.1994 by the High Court in W.P.M.P.No.24718/1993 in W.P.No.19610/1993, the suspension orders were revoked on 07.01.1994 with instructions to release the stock seized and, therefore, the direction to close the shop of the petitioner was not illegal and it was in public interest. As per Section 31(3) of the A.P. Excise Act (for brevity 'the Act'), the petitioner was not entitled to any remission for the period spent under suspension. As per Rule 33 of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 (for brevity 'the Rules, 1993'), if a shop is closed by an order of the competent authority and the licence granted earlier is withdrawn, no demand for the rental shall be made for the period of closure. But, in the instant case, licence was suspended for breach of conditions enjoined under the licence and, therefore, the action of the Commissioner of Excise in having rejected the representation of the petitioner is just and proper.

While the petitioner claims that after perusing the statement of the victim of liquor tragedy and the report of the Excise Inspector, the suspension order was revoked; it is the case of the respondents that it was a case of liquor tragedy but it is only under the interim directions given by the High Court, the suspension order was revoked. Regardless of the controversy which is not germane for the present purposes the fact remains that after nearly 48 days, the suspension order was revoked and the stock seized from the petitioner was delivered back.

The short question that falls for our determination is as to whether the petitioner is entitled to any remission for the period during which his shop was closed and licence was suspended?

In identical set of facts and circumstances in Writ Appeal No.529 of 2003, a Division Bench of this Court repelling the contentions of the Department that the appellants therein are not entitled to any remission or refund in view of Section 31(3) of the Act, held that inasmuch as the very basis on which the licence had been suspended earlier was vanished, the provisions of sub-section (3) of Section 31 of the Act cannot be invoked; and that once the order of suspension was found to be illegal and unlawful and because of the suspension, the licensee was prevented from carrying on his business, there was no reason why there should be no remission or

refund for the said period. In the process, to buttress its view, the Division Bench sought to place reliance upon a Judgment rendered by a learned single Judge of this Court in SURESH GOUD v. COLLECTOR, MAHABOONAGAR.

In TODDY TAPPERS CO-OPERATIVE SOCIETY case referred to supra yet another Division Bench of this Court while dealing with the provisions of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and the provisions of the Act, in paras 38 and 39 held thus:

“Sub-section (3) of Section 31, in our considered opinion, does not throw any light on the question that falls for consideration. On the other hand sub-section (3) of Section 31 of the Act is clarificatory in its nature, which declares that no licensee shall be entitled to any compensation on account of cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

It in no manner prohibits the licensing authority from collecting the rentals payable by the licensee even for the period during which the licence has been kept under suspension pending enquiry. The licensee continues to hold the licence until the same is duly cancelled or suspended as a measure of punishment for any specific period.”

That was a case where, as discussed hereinabove, the provisions of the Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 had fallen for consideration. Noticing the amended provisions of sub-rule (2) of Rule 28 thereof, the learned Division Bench was of the view that a plain reading of the sub-rule (2) of Rule 28 made it clear that even in case of suspension of a licence, the licensee was liable to pay the rentals along with interest till finalisation of the action initiated against the licensee. In that context, the Bench also held that sub-section (3) of Section 31 in no manner prohibited the licensing authority from collecting the rentals payable by the licensee even for the period during which the licence had been kept under suspension pending enquiry.

During the course of arguments, the learned Government Pleader for Excise seeks to place reliance upon a Judgment of co-equal Bench of this Court in SRI NARSIMHA WINES AND OTHERS v. PROHIBITION AND EXCISE SUPERINTENDENT, MEDAK DISTRICT AT SANGAREDDY AND OTHERS. Before the Full Bench, the provisions of the Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 (for brevity ‘the Rules, 1970’) had fallen for

consideration, particularly sub-rule (9) of Rule 25 thereof, the vires whereof were questioned. The Full Bench of this Court having been of the view that the grant of licence was a matter of contract between the Government and party and no public law was involved and, therefore, Rule 25(9) was not *ultra vires* and no writ of mandamus could be issued directing the authorities to grant remission for the period during which no business was carried on.

The Rules, 1970 are germane for consideration in the instant case even. Before seeking to place reliance upon the Full Bench Judgment of this Court, it is expedient to notice certain of the provisions contained in the Act as well as the Rules framed thereunder. Section 31 of the Act deals with cancellation or suspension of licence. Sub-section (3) thereof is germane for consideration. It reads as under:

“(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.”

After having perused the above excerpted provision, it becomes germane to notice the expression “excise revenue”, as defined under clause (12) of Section 2 of the Act which reads as under:

“ “excise revenue” means revenue derived or derivable from any duty, fee, tax, rent, fine, penalty or confiscation levied, imposed or ordered under the provisions of this Act or any other law for the time being in force relating to intoxicating liquors or intoxicating drugs;”

A bare perusal of the above provisions shows that the licensee whose licence has either been cancelled or suspended is not entitled to any compensation nor to the refund of any fee paid or deposit made in respect of the licence, which constitutes the excise revenue to the State. Rule 33 of the Rules, 1993 on which reliance has been placed by the Respondents reads as under:

“33. Licensee not entitled to claim compensation: - Where a licence is withdrawn or a shop is ordered to be closed by a competent authority under the provisions of the Act, otherwise than by cancellation or suspension, no demand of rental shall be made for the period for closure. But the licensee shall have no right to claim any damages or compensation on that account

except the refund of the proportionate licence fee. The Collector may on written application submitted by the licensee, by order reduce or remit rentals for the period of curfew imposed by the competent authority for a period of 3 days or more consecutively on the scale shown below:

[Emphasis supplied]

From the above excerpted provision, it is obvious that no refund can be claimed for the period during which the licence stood cancelled or suspended.

Sub-rule (9) of Rule 25 of the Rules, 1970 is also relevant to be considered. It reads as under:

“The annual licence fee for the licences in Form IL 24 referred to in Rule 23 shall be amended from time to time at the rates as shown in the schedule appended to these Rules. The annual licence fee for a lease year shall be paid before the commencement of the lease year to which it relates in one lump sum or in three equal instalments or in a manner as notified from time to time. Where the licence is issued before the 31st May of the lease year, the first instalment i.e., 1/3rd of the annual licence fee shall be paid into the Government Treasury through a”

This rule mandates that the annual licence fee for the licences shall be paid before the commencement of the lease year in lump sum or in three equal instalments. From the scheme of the Act and the procedure envisaged under various Rules framed under the Act, it becomes clear that the licensee is not entitled to any remission of the licence fee paid by him for the period during which his licence stands cancelled or suspended. Remission on the other hand is envisaged only in cases where the licence is withdrawn or the shop is ordered to be closed by a competent authority under the provisions of the Act, otherwise than by cancellation or suspension of licence.

Adverting to sub-rule (9) of Rule 25 of the Rules, 1970, a Full Bench of this Court in Sri Narsimha Wines case (referred to supra) held in para 24 thus:

“The matter relating to remission has been provided for by the State in exercise of its rule making power itself, which can neither be said to be unjust or arbitrary, no writ of, or in the nature of, mandamus can be issued directing the respondents to grant remission for the period during which no business was carried on.”

The Full Bench Judgment, in our considered view, squarely covers the situation obtaining in this writ petition. In view of the authoritative pronouncement made by a co-equal Bench of this Court in Sri Narsimha Wines case (referred to supra), no writ of mandamus can be issued directing the State Government to grant remission. The said Judgment of this Court has not been placed before either of the Division Benches of this Court. Therefore, we have no doubt in our minds that the petitioner is not entitled to any remission as claimed by him.

The reference is answered accordingly.

M.H.S.ANSARI, J.

D.S.R.VARMA, J.

T.CH.SURYA RAO, J.

_____ March, 2005.

VGSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Prl. Secretary, Excise (Revenue), Govt. of Andhra Pradesh,
Secretariat Buildings, Hyderabad.
- 2 The Commissioner of Excise Govt. of A.P., Hyderabad
- 3 The Excise Superintendent Shankarapuram, Cudapah Dist.
- 4 2 CCs to G.P. for Prohibition Excise, High Court of A.P., Hyderabad (OUT).
- 5 1 CC to Mr.A.V.Sivaiah, Advocate.
- 6 2 CD copies.
- 7 One copy to the Section Officer, Writ Posting Section, High Court of A.P.,
Hyderabad.